

UNITED STATES DISTRICT COURT
For The
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT - WI
FILED

IRA R.BANKS
3321 North 21th Street
C/O P.O.BOX 65300
Milwaukee,WI 53206

Plaintiff,

VERNA BANKS
3321 North 21st Street
C/O P.O.BOX 6530
Milwaukee,WI 53206

Plaintiff,

Case No. 20-cv-01437-12:47

Presiding Judge
JP Stadtmueller

Jurisdiction
Federal Question
42 U.S.C. 1983 Civil Rights Act.
Response To Motion To Dismiss
Beatrice Garrett, Docket Text #27
file date 4/28/2021

v.

US Bank Trust National Association
as Trustee of American Homeowner
Preservation Trust Series 2014B, et al
Defendant,s

Pursuant to Civi L.R. 12 Motion To Dismiss or motion for judgement
on the pleading in Pro Se Litigants, Fed.R.Civ.P. 12(c)(b)(6), Fed.R.
Civ. P. 12(c), Set forth in Civil L.R. 56(a)(1) Applies.

Plaintiff,s objection on the following grounds. An states

Plaintiff had to make a trip to the clerk,s of court to get a
copy of this motion, Note their is no cover sheet or certificate
of service, This is a inhouse communication by this defendant,s
as their are others documents file in this case in the same manner
meaning their are unlawful act,s on going.

In response to motion to dismiss reference above. In litigation
involving a pro se party where matters outside the pleading are presented
to the court in conjunction with a motion to dismiss pursuant to
Fed.R.Civ.P. 12 (b)(6) or a motion for judgement on the pleading
pursuant to Fed.R. 12.(c), The procedure set forth in Civi.L.R. 56
(a)(1) applies. Beatrice Garrett, State Bar No. 104877, Defendant
motion to dismiss is baseless. To dismiss a complaint, see Weiss v.
Cooley, 230 F.3d 1027, 1029 (7th Cir. 2000) A Claim may be dismissed
only if it appears beyond doubt that the plaintiff can prove no
set of facts in support of his claim which would entitle him to
relief. See attached Exhibit 13-13A. An 13B, Defendant allege US Bank
is the holder of the plaintiff,s Mortgage since 2011. Exhibit 13B
Affidavit by server states, Their is no business by that name is
located in suite 606, and attached a photo a documentation but, the
photo is missing , Plaintiff have not receive photo, (Material Fact),
The court is restricted to an examination of the complaint, See Hill
v. Trustee of Ind. Univ. 527 F.2d 248, 251 (7th Cir. 1976). The Court
only examines the allegation in the complaint.

18-cv-004661 in the State Of Wisconsin Circuit Court Milwaukee County on 6-01-2018 against Verna Banks Plaintiff, and Johnny Banks (deceased at the time complaint was filed), Defendant filed a fraudulent foreclosure of mortgage inserted a mortgage contract signed by Verna Banks plaintiff and her son Johnny Banks with Citi Financial Mortgage in 2000, the note has pages 1-4 adjustable rate note plus the mortgage (security instrument) has 1-7 pages a Fannie Mae/Freddie Mac uniform instrument, Attorney Beattice Gattett fixed US Bank Trust National Association as trustee of American Homeowner Preservation Trust Series 2014B, 819 South Wabash Ave. Suite 606, Chicago, IL 60605, defendant as the holder as of 2011. Property located at 3312-3323 N. 21st Street, Milwaukee, WI. 53206. see this case 20-c-1437 Complaint count 1-2. In this matter.

AFFIDAVIT OF NON SERVICE Case No-c-1437 states. service was attempted on 22 January 2021 @ 3:15 pm US Bank Trust Association is not located at the above address. A receptionist in 606 stated she did not know of any business by that name in the building. the business located in suite 606 is Debt Cleanse Group legal service. see photo. The plaintiff do not have the photo reference in server affidavit, see attached hereto exhibit C. Attorney Garrett, Plaintiff willfully and knowingly engaged in conduct in violation of Wis. §802.05, (1)(2)(a).

The Complaint in this Court alleges deceptive disclosure practices by a financial institution (address unknown) and their agents location (unknown), defendant, s violated provision of federal Truth-in-Lending Act. and the federal Real Estate Settlement Procedure Act (RESPA), A motion to Dismiss do not change the merits.

Wis. §46.90 elder abuse and elder financial exploitation department of justice, Wisconsin Statute §46.90(1) Means any person age 60 or older, see plaintiff documentation of age file in this court at Exhibit (6), Paragraph #4 Title Law office of Bettie Rogers. dated 5/12/2014. That attorney was retained due to missing money orders.

(2)

LEGAL STANDARDS

A cause of action shall not be dismissed for failure to state a claim under Fed.R.Civ.P. 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no facts in support of his claim which would entitle him to relief". Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). In considering a motion brought pursuant to Fed.R.Civ.P. 12(b), the court must assume all of the allegations in the complaint are true. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). ~~Nona~~ FARRAR, Plaintiff, v. CITY OF CHICAGO, et al., Defendants NO.03 C 5530 United States District Court, N.D. Illinois, Nov, 12 2003. Plaintiff is not required to plead facts or legal theories or cases or statute, but merely to describe her claim briefly and simply. Fed. Rule Civ. Proc. Rule 8(a) 28 U.S.C.A. LEGAL STANDARD Court will accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the plaintiff. Thompson v. Ill. Dept of Prof, l regulation. 300 F.3d 750, 753 (7th Cir. 2002). Federal Rule of Civil Procedure 8(a), requires a complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief. 42 U.S.C. §1983 a plaintiff must allege two elements (1) THE conduct complained of was committed by a person acting color of state law; and (2) The activity deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. case v. milewski, 327 F.3d 564, 566 (7th Cir. 2003).

CONCLUSION

For the above reasons the plaintiff's request request defendant, s et al motion to dismiss is denied.

Dated This 19th day of May 2021.

Sign by Ira R. Banks of

Ira R. Banks Attorney
3321 N. 21st Street
C/O P.O. BOX 6530
Milwaukee, WI 53206

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT - WI
FILED

2021 APR 28 P 12:46

CLERK OF COURT

Ira R. Banks, et al.

Plaintiffs,

MOTION TO DISMISS

Case No. 20-C-1437

vs.

US Bank Trust National Association
as Trustee of American Homeowner
Preservation Trust Series 2014B, et al.

Defendants.

Defendant Attorney Beatrice Garrett's Motion to Dismiss Plaintiff's Complaint

Come now Defendant Attorney Beatrice Garrett, hereinafter Attorney Garrett, who moves to dismiss the Plaintiff's first, second, and third claims for relief in complaint number 20-C-1437; Plaintiff does not have legal standing, "sat on his rights", and fails to state a cause of action pursuant to Fed. R. Civ. P. 12 (b)(1), and therefore is not entitled to bring his claims in federal court.

ARGUMENT

On June 14, 2018, plaintiff accepted in care of Verna Banks service of the summons and complaint of foreclosure for case number 18CV004661 with a notice attached, on pink paper, for the Metro Milwaukee Foreclosure Mediation Program and the mediation request form. Plaintiff did not apply for the mediation program and thus did not avail himself to an opportunity for the loan to be reviewed for a modification or other loss mitigation options. On June 26, 2018, plaintiff filed an

EXHIBIT 13

answer in the civil court; however, he did not appear on July 25th for the scheduling conference. The court ordered Attorney Garrett to send notice of the adjourned date with notice that default judgment may be granted if plaintiff did not appear. On August 16, 2018, plaintiff did not appear at the adjourned scheduling conference and the court granted Attorney Garrett's motion to strike plaintiff's answer in the foreclosure case. Thus, under the doctrine of laches plaintiff "sat on his rights and plaintiff does not have legal standing to bring his claims in federal court.

CONCLUSION

For the foregoing reasons the defendants' motion to dismiss should be granted and the first, second, and third claims for relief should be dismissed.

Respectfully Submitted

By: Beatrice Garrett
Beatrice Garrett
State Bar No. 1054877
9163 West Hawthorne Ave. #3
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EXHIBIT 13 A

AFFIDAVIT OF NON SERVICE

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